

## Internal Revenue Service

Number: **201423012**  
Release Date: 6/6/2014

Index Number: 355.00-00, 355.01-02,  
368.04-00

Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:CORP:B01  
PLR-137647-13

Date:  
February 5, 2014

### Legend

Distributing =

Controlled 1 =

Controlled 2 =

Shareholder A =

Shareholder B =

Shareholder C =

Shareholder D =

Shareholder E =

Shareholder F =

Shareholder G =

Shareholder H =

Trust =

Business A =

State A =

Date 1 =

aa =

bb =

cc =

dd =

ee =

ff =

gg =

hh =

ii =

zz% =

Dear :

This letter responds to a letter dated August 16, 2013 from your authorized representative, requesting rulings on certain federal income tax consequences of the proposed transaction described below (the “Proposed Transaction”). The information submitted in that request and in subsequent correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Proposed Transaction: (i) satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or any controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

### SUMMARY OF FACTS

Distributing is a closely-held State A corporation that was incorporated on Date 1. Distributing has aa shares of a single class of common stock issued and outstanding: Shareholder A owns bb shares in his revocable trust ("Trust"); Shareholder B owns cc shares; Shareholder C owns dd shares; Shareholder D owns ee shares; Shareholder E owns ff shares; Shareholder F owns gg shares; Shareholder G owns hh shares; and Shareholder H owns ii shares. Shareholder A is the parent of Shareholders B and C; Shareholders D and E are spouses of Shareholders B and C, respectively; Shareholder F is the child of Shareholder B; and Shareholders G and H are children of Shareholder C. Collectively, Shareholders B, D, and F (the "Shareholder B Group") and Shareholders C, E, G, and H (the "Shareholder C Group") each own approximately zz% of the stock of Distributing.

Distributing is engaged in Business A. Financial data for Business A shows that Business A has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The Shareholder B Group and the Shareholder C Group have had significant disagreements about the management and operation of Distributing and believe it is necessary to separate Business A between the two family shareholder groups. Accordingly, Distributing has structured the Proposed Transaction described below.

### PROPOSED TRANSACTION

For what is represented to be valid business reasons, Distributing proposes to undertake the following Proposed Transaction:

- (i) Shareholder A will make a gift of one-half of the shares of Distributing held by Trust to each of Shareholder B and Shareholder C. After the gift, the Shareholder B Group and Shareholder C Group each will hold one-half of the outstanding shares of Distributing.
- (ii) Distributing will form Controlled 1 and Controlled 2 as State A corporations. Controlled 1 and Controlled 2 each will have a single class of voting common stock outstanding.
- (iii) Distributing will transfer one-half of its assets to Controlled 1 in exchange for all of the Controlled 1 stock and the assumption by Controlled 1 of the liabilities, if any, associated with the transferred assets.
- (iv) Distributing will transfer one-half of its assets to Controlled 2 in exchange for all of the Controlled 2 stock and the assumption by Controlled 2 of the liabilities, if any, associated with the transferred assets (together with Step (iii) above, the "Contributions").
- (v) Distributing will distribute all of the Controlled 1 stock to the members of the Shareholder B Group in exchange for all of the Distributing stock held by the members of the Shareholder B Group.
- (vi) Distributing will distribute all of the Controlled 2 stock to the members of the Shareholder C Group in exchange for all of the Distributing stock held by the members of the Shareholder C Group (together with Step (v) above, the "Distributions").
- (vii) Distributing will be dissolved.

## REPRESENTATIONS

Distributing has made the following representations regarding the Contributions and the Distributions:

- (a) The fair market value of Controlled 1 stock to be received by the Shareholder B Group and the fair market value of the Controlled 2 stock to be received by the Shareholder C Group, and any other consideration to be received by each shareholder of Distributing in the Distributions, will be approximately equal to the fair market value of Distributing stock surrendered by such shareholders in the Distributions.
- (b) No part of the consideration to be distributed by Distributing in the Distributions will be received by a shareholder as a creditor, employee, or in any capacity other than a shareholder of Distributing.

- (c) The five years of financial information submitted for Business A conducted by Distributing is representative of the present operations and there have been no substantial operational changes since the date of the last financial statements submitted.
- (d) The pro forma financial information for each of Controlled 1 and Controlled 2 is representative of each of Controlled 1 and Controlled 2's respective share of the business conducted by Distributing during the five-year period ending on the date of the Distributions.
- (e) Neither Business A (as conducted by Distributing) nor control of any entity conducting this business will have been acquired during the five-year period ending on the date of the Distributions in a transaction in which gain or loss was recognized in whole or in part.
- (f) Following the Distributions, each of Controlled 1 and Controlled 2 will continue, independently and with its separate employees, the active conduct of its respective share of all of the integrated activities of Business A conducted by Distributing prior to the consummation of the transaction.
- (g) The Distributions will not be used principally as a device for the distribution of the earnings and profits of any of Distributing, Controlled 1, or Controlled 2.
- (h) The Distributions will be carried out for the following corporate business purpose(s):
  - i. To eliminate differences in the future direction of management and operational functions of Distributing;
  - ii. To eliminate discord between Shareholder B and Shareholder C;
  - iii. To maintain a consistent business strategy for Distributing; and
  - iv. To allow the Shareholder B Group and the Shareholder C Group to maintain and develop their separate business strategies as it relates to the operation of Controlled 1 and Controlled 2 to increase each corporation's profitability.

The Distributions are motivated in whole or substantial part by these corporate business purpose(s).

- (i) The total adjusted basis of the assets to be transferred to Controlled 1 or Controlled 2 by Distributing will equal or exceed the sum of the liabilities

assumed (as determined under section 357(d)) by Controlled 1 or Controlled 2, as the case may be. The liabilities assumed, if any, (as determined under section 357(d)) by Controlled 1 or Controlled 2 will be incurred in the ordinary course of business and will be associated with the assets transferred.

- (j) The total fair market value of the assets transferred to Controlled 1 or Controlled 2 by Distributing in the Contributions will equal or exceed the sum of: (i) the amount of any liabilities assumed (within the meaning of section 357(d)) by Controlled 1 or Controlled 2 in connection with the Contributions, (ii) the amount of any liabilities owed to Controlled 1 or Controlled 2 by Distributing that are discharged or extinguished in connection with the Contributions, and (iii) the amount of any cash and the fair market value of any other property (other than stock or securities permitted to be received under section 361(a) without recognition of gain) received by Distributing from Controlled 1 or Controlled 2 in connection with the Contributions. The fair market value of the assets of each of Controlled 1 and Controlled 2 will exceed the amount of its liabilities immediately after the Contributions.
- (k) The income tax liability for the taxable year in which investment credit property (including any building to which section 47(d) applies) is transferred will be adjusted pursuant to section 50(a)(1) or (a)(2) to reflect an early disposition of the property.
- (l) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
- (m) No intercorporate debt will exist between Distributing and Controlled 1 or Controlled 2 at the time of, or subsequent to, the Distributions.
- (n) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled 1 or Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length. In addition, payments made in connection with all continuing transactions, if any, between Controlled 1 and Controlled 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (o) No parties to the Proposed Transaction are investment companies as defined in sections 368(a)(2)(F)(iii) and (iv).
- (p) For purposes of section 355(d), immediately after the Distributions, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in

section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distributions.

- (q) For purposes of section 355(d), immediately after the Distributions, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of any Controlled 1 or Controlled 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 1 or Controlled 2 stock, that either: (i) was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distributions; or (ii) is attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distributions.
- (r) There is no acquisition of stock of Distributing, Controlled 1, or Controlled 2 (including any predecessor or successor of any such corporation) that is part of a plan or a series of related transactions (within the meaning of Treas. Reg. § 1.355-7) that includes the Distribution of the stock of Controlled 1 or Controlled 2.
- (s) Immediately after the transaction (as defined in section 355(g)(4)), neither Distributing nor Controlled 1 nor Controlled 2 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (t) Distributing, Controlled 1, Controlled 2, and the Distributing shareholders each will pay its own or their own expenses, if any, incurred in connection with the Distributions.

## RULINGS

Based solely on the information submitted and the representations made above, we rule as follows regarding the Proposed Transaction:

- (1) Each Contribution, followed by its respective Distribution, will qualify as a reorganization within the meaning of section 368(a)(1)(D). With respect to each reorganization, Distributing, Controlled 1 or Controlled 2 (as the case may be) will each be “a party to the reorganization” within the meaning of section 368(b).
- (2) Distributing will recognize no gain or loss on the Contributions. (Sections 361(a) and 357(a)).
- (3) Neither Controlled 1 nor Controlled 2 will recognize any gain or loss on the Contributions. (Section 1032(a)).

- (4) The basis in the assets received by Controlled 1 and Controlled 2 in the Contributions will be the same as the basis of such assets in the hands of Distributing immediately before the Contributions. (Section 362(b)).
- (5) The holding period for the assets received by Controlled 1 and Controlled 2 in the Contributions will include the period during which Distributing held such assets. (Section 1223(2)).
- (6) Distributing will recognize no gain or loss on the Distributions. (Section 361(c)).
- (7) No gain or loss will be recognized by (and no amount will be included in the income of) the shareholders of Distributing on the receipt of the stock of Controlled 1 or Controlled 2. (Section 355(a)(1)).
- (8) The basis of the Controlled 1 stock in the hands of the members of the Shareholder B Group, and the basis of the Controlled 2 stock in the hands of the members of the Shareholder C Group, immediately after the Distributions will, in each instance, be the same as such shareholders' basis in his or her Distributing stock held immediately before the Distributions, allocated in the manner described in Treas. Reg. § 1.358-2, in accordance with sections 358(a) through (c).
- (9) The holding period of the Controlled 1 stock and the Controlled 2 stock received by the shareholders of Distributing will include the holding period of their Distributing stock with respect to which each Distribution was made, provided that such Distributing stock is held as a capital asset on the date of the Distributions. (Section 1223(1)).
- (10) As provided in section 312(h), proper allocation of earnings and profits between Distributing, Controlled 1, and Controlled 2 will be made in accordance with Treas. Reg. § 1.312-10(a).
- (11) Shareholder A's transfer of one-half his ownership interest in Distributing to each of Shareholder B and Shareholder C is a gift under Section 2511 and Treas. Reg. § 25.2511-2.

#### CAVEATS

No opinion is expressed about the federal income tax consequences of the Proposed Transaction under other provisions of the Code or regulations or the federal income tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:



- (i) Whether the Proposed Transaction satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) Whether the Proposed Transaction is used principally as a device for the distribution of the earnings and profits of any of Distributing, Controlled 1, or Controlled 2 (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); and
- (iii) Whether the Proposed Transaction is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in Distributing, Controlled 1, or Controlled 2 (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

### PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Mary E. Goode  
Senior Counsel, Branch 6  
Office of Associate Chief Counsel (Corporate)